

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000288-001 DT

10/12/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

KENNETH M FLINT

v.

ROBERT JAMES HETRICK (001)

THEODORE A AGNICK

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number TR 2011-010745.

Defendant-Appellant Robert Hetrick (Defendant) was convicted in Scottsdale Municipal Court of driving under the influence. Defendant contends the trial court erred in denying his Motion for Order To Produce Documents, by which he requested the GPS Transponder Download from a police vehicle, and in denying his Motion To Suppress, which alleged the officer did not have reasonable suspicion to stop his vehicle. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On April 27, 2011, Defendant was cited for driving under the influence, A.R.S. § 28-1381(A)(1) & (A)(2); failing to stop at a stop sign, A.R.S. § 28-855(B); and no proof of insurance, A.R.S. § 28-4135(C). The State subsequently filed an Amended Complaint charging Defendant with driving under the extreme influence, A.R.S. § 28-1382(A)(1). Prior to trial, Defendant filed a Motion for Order To Produce Documents asking the trial court to order the State or the Custodian of Records for the Scottsdale Police Department to produce the GPS Transponder Download for the vehicle that Officer Wright, #1325 of the Scottsdale Police Department, was operating on April 27, 2011, from 8:00 p.m. to 11:00 p.m. Defendant contended determining exactly where Officer Wright parked his police vehicle would “clarify the conflicting reports between the two officers . . .” (Motion, dated Nov. 25, 2011, at 3.)

At the hearing on Defendant’s Motion for Order To Produce Documents, Defendant’s attorney explained the alleged conflict: Officer Wright said he had parked across the street from Patties, which is on 1st Avenue in Scottsdale; after he was through dealing with Defendant, he got into his vehicle, backed up, headed east, and then saw a vehicle drive through the intersection of

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000288-001 DT

10/12/2012

1st Avenue and Brown Avenue without stopping. (R.T. of Dec. 13, 2011, at 6.) Officer Hernandez said he and Officer Wright arrived at Bandera's, which is on 1st Street; they walked the 2 blocks to Patties where they met Defendant; then they all walked back to Bandera's; and after Defendant paid his unpaid bill, Defendant left. (*Id.* at 5.) From Officer Hernandez' statement that he and Officer Wright arrived at Bandera's, Defendant's attorney interpreted this to mean Officer Wright drove his vehicle to Bandera's and parked near there rather than across from Patties, thus Officer Wright must have followed Defendant from Bandera's north on Brown Avenue rather than being on 1st Avenue and seeing Defendant's vehicle drive through the intersection of 1st Avenue and Brown Avenue. (*Id.* at 6–7.)

Officer Wright testified he had parked his vehicle on the south side of 1st Avenue, which happen to be across from Patties, and had left his vehicle to investigate an unrelated incident. (R.T. of Dec. 13, 2011, at 19–20.) As he was standing near his vehicle, the manager of Bandera's walked around the corner and flagged him down. (*Id.* at 19.) The manager was on the phone with Dispatch asking for an officer to investigate, so Officer Wright and the manager walked back to Bandera's. (*Id.* at 20.) When Officer Hernandez arrived on scene (near Bandera's), the manager said Defendant had walked out without paying his bill and walked over to Patties. (*Id.*) Officer Wright, Officer Hernandez, and the manager then walked back to Patties; the manager identified Defendant in Patties; the three escorted Defendant back to Bandera's; and Defendant paid the bill. (*Id.*) Defendant then left heading south; Officer Wright headed north back to his vehicle, got into his vehicle, backed out, headed east, and then saw a vehicle drive through the intersection of 1st Avenue and Brown Avenue without stopping. (*Id.*) Officer Wright then stopped that vehicle, and discovered Defendant was the driver. (*Id.*) Officer Wright said he did not park near Bandera's, nor did he see Defendant get into his vehicle. (*Id.* at 20–21.)

At the conclusion of Officer Wright's testimony, the trial court ruled as follows:

Very well. I don't agree with the State, and I don't agree that you're entitled to the production of the documents. I—I just don't see that it—it's—provides any exculpatory information. It's—it's—it's not laid in a motion, it's not a critical, or it doesn't do anything to this case for relative materiality. You've made your record. I'll deny your Motion To Produce.

(R.T. of Dec. 13, 2011, at 22–23.)

On December 14, 2011, Defendant filed a Motion To Suppress alleging the officer did not have reasonable suspicion of a real or suspected traffic violation. At the hearing on that motion, Officer Hernandez testified he was on duty on April 27, 2011, on patrol in the downtown Scottsdale District. (R.T. of Dec. 29, 2011, at 28.) He was dispatched to Bandera's Restaurant, and both he and Officer Wright arrived at that restaurant. (*Id.* at 28–29.) The manager said an individual had not paid his bill and then left and went to Patties. (*Id.* at 29.) He and Officer Wright then went to Patties and contacted the individual, who turned out to be Defendant. (*Id.* at 29.) They all walked back to Bandera's, where Defendant paid the bill and then left. (*Id.* at 30.)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000288-001 DT

10/12/2012

Officer Wright testified he was patrolling in the downtown area on April 27, 2011, when he responded to a call for Bandera's Restaurant. (R.T. of Dec. 29, 2011, at 47.) He said Officer Hernandez was also dispatched to Bandera's, but they were in separate vehicles. (*Id.*) He had received a description of the reporting party, who was the manager of Bandera's, and when he saw a person matching that description, he made contact. (*Id.* at 50, 52.) That contact took place at the corner of Scottsdale Road and 1st Avenue. (*Id.* at 57.) The manager had been following the person who had not paid the bill. (*Id.* at 51.) After they concluded dealing with Defendant, Officer Wright returned to his vehicle, which he had parked on 1st Avenue. (*Id.* at 53.) He backed his vehicle out onto 1st Avenue and headed east toward Brown Avenue. (*Id.* at 53–54, 62.) He then saw a vehicle drive through the intersection of 1st Avenue and Brown Avenue without stopping. (*Id.* at 54, 62–63.) He pulled in behind that vehicle and activated his emergency lights to make a stop. (*Id.* at 55.) He had no idea who was driving that vehicle, but after stopping the vehicle, he saw Defendant was the driver. (*Id.* at 63.) Defendant never denied failing to stop at the stop sign, and even offered to park his vehicle and walk home. (*Id.*)

Defendant then testified and gave his version of the events of April 27, 2011. (R.T. of Dec. 29, 2011, at 65.) He said he left Bandera's and thought the people there had charged his drinks to the card he had previously given them. (*Id.* at 66–67.) When he left Bandera's, he walked north to Patties. (*Id.* at 65.) Once the officers contacted him, they all returned to Bandera's and Defendant paid the bill. (*Id.* at 67.) He and a woman friend then left and walked south near 2nd Street and Scottsdale Road where his vehicle was parked. (*Id.* at 67–69.) Once they got there, he turned around and saw the officers were still there, and because he did not feel comfortable driving when the officers were there watching him, he stopped and began talking to the woman accompanying him. (*Id.* at 69.) After 5 or 6 minutes he could no longer see the officers, so he said goodbye to the woman accompanying him, got into his vehicle, and drove away. (*Id.* at 70–71.) He turned right onto 2nd Street, turned left onto Brown Avenue, and proceeded north. (*Id.* at 71.) He said each of the intersections had four-way stops and he stopped at each of them. (*Id.* at 71–72.) When he was halfway through the intersection a 1st Avenue and Brown Avenue, he saw emergency lights on the vehicle behind him, so he immediately pulled into the first parking space north of 1st Avenue. (*Id.* at 72.) On cross-examination, Defendant acknowledged his BAC reading that night was 0.167. (*Id.* at 73–74.)

At the conclusion of the testimony, the trial court found Officer Wright had reasonable suspicion that Defendant had violated a traffic law for failing to stop for a stop sign. (R.T. of Dec. 29, 2011, at 81, 84, 86.) The trial court therefore denied Defendant's Motion To Suppress. (*Id.* at 86.) Defendant later submitted the matter on the record. (R.T. of Jan. 4, 2012, at 87.) The trial court found Defendant had a BAC of 0.167 and thus found him guilty of the three DUI charges, and further found him responsible for failing to stop for the stop sign. (*Id.* at 90.) The trial court then imposed sentence. (*Id.* at 91–93.) On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000288-001 DT

10/12/2012

II. ISSUES:

A. *Did the trial court abuse its discretion in denying Defendant's motion for additional discovery.*

Defendant contends the trial court abuse its discretion in denying Defendant's motion for additional discovery pursuant to the following rule:

g. Disclosure by Order of the Court. Upon motion of the defendant showing that the defendant has substantial need in the preparation of the defendant's case for material or information not otherwise covered by Rule 15.1, and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order any person to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

Rule 15.1(g), ARIZ. R. CRIM. P. A trial court has broad discretion over discovery matters, and an appellate court will not disturb the trial court's ruling absent an abuse of that discretion. *State v. Tankersley*, 191 Ariz. 359, 956 P.2d 486, ¶ 31 (1998); *State v. Fields (Rosengren)*, 196 Ariz. 580, 2 P.3d 670, ¶ 4 (Ct. App. 1999). To obtain relief under Rule 15.1(g), Defendant was required to show both a "substantial need" and "undue hardship":

To warrant an order for disclosure under Rule 15.1[g], Ariz. R. Crim. P., a defendant must demonstrate that he or she has a "substantial need" for the requested information and "is unable without undue hardship to obtain the substantial equivalent by other means." Information is not discoverable unless it could lead to admissible evidence or would be admissible itself.

Fields (Rosengren) at ¶ 4.

Defendant's attorney presented the following argument to the trial court: Officer Wright's version of the events was essentially as follow: (1) Officer Wright said he parked his vehicle on 1st Avenue in a space that was across from Patties; (2) once he was through dealing with Defendant, he walked from Bandera's back to his vehicle; (3) he then backed out onto 1st Avenue and headed east; (4) he saw a vehicle drive through the intersection at Brown Avenue without stopping; (5) he then stopped that vehicle, which turned out to be driven by Defendant. Defendant's attorney contended Officer Wright was lying, and instead the following happened: (1) Officer Wright parked his vehicle in the area of 1st Street and Scottsdale Road near Bandera's; (2) once he was through dealing with Defendant, he returned to his vehicle and watched Defendant get into his own vehicle; (3) Officer Wright then followed Defendant as he drove north on Brown Avenue; (4) he saw Defendant's vehicle drive through the intersection at 1st Avenue, but Defendant did stop for the stop sign; (5) Officer Wright then stopped Defendant's vehicle, not because Defendant had failed to stop for the stop sign, but because Officer Wright thought Defendant had been drinking and should not be driving. The key to Defendant's attorney's argument was his

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000288-001 DT

10/12/2012

contention that Officer Wright parked his vehicle in the area of 1st Street and Scottsdale Road near Bandera's, and the basis of that contentions was Officer Hernandez' statement that he and Officer Wright arrived at Bandera's. He contended the GPS Transponder Download for Officer Wright's vehicle would show it was parked near Bandera's.

A review of the testimony in this matter shows the trial court did not abuse its discretion in denying Defendant's motion for additional discovery. As noted above, the basis for Defendant's claim that Officer Wright parked his vehicle near Bandera's was his contentions that Officer Hernandez' said he and Officer Wright arrived at Bandera's. Hernandez never said, however, that Officer Wright parked his vehicle near Bandera's. Furthermore, Officer Wright's version is consistent with Officer Hernandez' version: Officer Wright met Bandera's manager at 1st Avenue and Scottsdale Road; the two walked the 2 blocks back to Bandera's because that was the location to where Officer Hernandez had been dispatched; Officer Wright (and the manager) met Officer Hernandez near Bandera's; Officer Wright, Officer Hernandez, and the manager then walked the 2 blocks back to Patties to find Defendant. At the hearing on Defendant's Motion for Order To Produce Documents, Defendant never presented Officer Hernandez as a witness, thus there was no testimony from Officer Hernandez explaining exactly what he meant when he said he and Officer Wright arrived at Bandera's. Because Defendant failed to present any evidence contradicting Officer Wright's testimony that he parked his vehicle on 1st Avenue across from Patties, the trial court did not abuse its discretion in finding Defendant failed to establish he had a "substantial need" for the GPS Transponder Download.

Moreover, even under Defendant's version, Officer Wright would still have had the legal authority to stop Defendant. Officer Wright first encountered Defendant at Patties, where Defendant presumably was drinking. Defendant had a BAC of 0.167, which is over two times the legal limit, thus he would have been showing signs of impairment. Officer Wright walked with Defendant for the 2 blocks from Patties to Bandera's, so Officer Wright would have seen these signs of impairment. Defendant failed to pay his bill at Bandera's, which showed a certain level of impairment of judgment. Officer Wright was with Defendant when he paid his bill, so he would have known how much Defendant had to drink at Bandera's. This would have given Officer Wright reasonable suspicion that Defendant was impaired as the result of consuming alcohol. Thus, if Officer Wright had wanted to keep Defendant under observation and arrest him if he drove, Officer Wright could have arrested Defendant as soon as he got into his vehicle and inserted the ignition key, and would not have had to watch as he drove out onto 2nd Street, and then followed him the 1 block to Brown Avenue, and then 3 blocks from 2nd Street to 1st Avenue.

B. Did the trial court abuse its discretion in finding the officer had reasonable suspicion to stop Defendant's vehicle.

Defendant contends the trial court abuse its discretion in finding the officer had reasonable suspicion to stop his vehicle. In reviewing a trial court's ruling on a motion to suppress, an appellate court is to defer to the trial court's factual determinations, including findings based on a wit-

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000288-001 DT

10/12/2012

ness's credibility and the reasonableness of inferences the witness drew, but is to review de novo the trial court's legal conclusions. *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119, ¶¶ 75, 81 (2004); *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Olm*, 223 Ariz. 429, 224 P.3d 245, ¶ 7 (Ct. App. 2010). A police officer has reasonable suspicion to detain a person if there are articulable facts for the officer to suspect the person is involved in criminal activity or the commission of a traffic offense. *State v. Lawson*, 144 Ariz. 547, 551, 698 P.2d 1266, 1270 (1985). The Arizona statutes provide that a peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence. A.R.S. § 28-1594; A.R.S. § 13-3883(B). The Arizona Court of Appeals has held a traffic violation provides sufficient grounds to stop a vehicle. *State v. Orendain*, 185 Ariz. 348, 352, 916 P.2d 1064, 1068 (Ct. App. 1996); *State v. Acosta*, 166 Ariz. 254, 257, 801 P.2d 489, 492 (Ct. App. 1990), quoting *United States v. Garcia*, 897 F.2d 1413, 1419 (7th Cir. 1990). Thus, in order for a trial court to find that an officer was legally justified in stopping a suspect, it must find the officer (1) knew of articulable facts that (2) raised a reasonable suspicion of criminal activity or a traffic violation.

In the present matter, Officer Wright testified Defendant drove through the intersection of 1st Avenue and Brown Avenue without stopping for the stop sign, which is a traffic violation. There was thus presented to the trial court sufficient evidence to establish that Officer Wright had reasonable suspicion to stop Defendant's vehicle.

Defendant contends, however, the testimony about the stop was conflicting. In addressing the role of an appellate court in reviewing conflicting evidence and testimony, the Arizona Supreme Court has said the following:

Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to "look over the shoulder" of the trial judge and, if appropriate, substitute our judgment for his or hers.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). Because this issue involves "an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge" rather than a "question . . . of law or logic," it is not appropriate for this Court to "substitute [its] judgment for that of the trial judge."

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000288-001 DT

10/12/2012

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court did not abuse its discretion in denying Defendant's motion for additional discovery. Further, the trial court did not abuse its discretion in finding Officer Wright had reasonable suspicion to stop Defendant's vehicle.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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